

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NATHANIEL MULLINS,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner of  
Social Security,

Defendant.

Case No. C13-1887-RSM-BAT

**REPORT AND  
RECOMMENDATION**

Nathanial Mullins seeks review of the denial of his Supplemental Security Income and Disability Insurance Benefits applications. He contends the ALJ erred by rejecting the opinions of three examining doctors and two treating nurse practitioners and by finding Mr. Mullins not fully credible. Dkt. 18. For the reasons discussed below, the Court recommends the Commissioner's decision be **AFFIRMED** and the case be **DISMISSED** with prejudice.

**BACKGROUND**

Mr. Mullins was 45 years old on his alleged onset date and 49 years old as of the date of the ALJ's decision. Tr. 22. He has a high school education and has worked as a laborer and construction worker and as a shipping and receiving clerk. Tr. 227. On February 23, 2011, he applied for benefits, alleging disability as of July 1, 2008; he later amended his alleged onset date to March 29, 2010. Tr. 34, 199, 206. His applications were denied initially and on

1 reconsideration. Tr. 102, 122, 130. After conducting a hearing, the ALJ issued a decision on  
2 May 17, 2012, finding Mr. Mullins not disabled. Tr. 12-23. As the Appeals Council denied Mr.  
3 Mullins's request for review, the ALJ's decision is the Commissioner's final decision. Tr. 1.

#### 4 **THE ALJ'S DECISION**

5 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found that Mr. Mullins had  
6 not engaged in substantial gainful activity since the alleged onset date; he had the following  
7 severe impairments: affective disorder (depressive disorder), anxiety disorder, substance  
8 addiction disorder, and hepatitis C; and these impairments did not meet or equal a listed  
9 impairment.<sup>2</sup> Tr. 14-15. The ALJ found that Mr. Mullins had the residual functional capacity to  
10 perform medium work except he is able to climb ladders, ropes, and scaffolds occasionally; he  
11 must avoid concentrated exposure to hazards such as machinery and heights; in order to maintain  
12 concentration, persistence, and pace in an ordinary work setting on a regular and continuous  
13 basis and to remain within customary tolerances of employers' rules regarding sick leave and  
14 absences, he could perform work involving 1 to 3 steps that he can learn after a short  
15 demonstration; in order to respond appropriately to coworkers and supervisors, he could interact  
16 with supervisors occasionally, deal with occasional work setting changes, and work in proximity  
17 to coworkers except that he could not work in a team or in a cooperative effort; and he is able to  
18 perform work that does not require direct service to the general public or frequent contact with  
19 the general public as an essential element of the work process, although incidental contact with  
20 the general public is not precluded. Tr. 16-17. The ALJ found that Mr. Mullins was able to  
21 perform his past relevant work as a shipping and receiving clerk and, in the alternative, that he  
22 could perform other work that exists in significant numbers in the national economy. Tr. 21-23.

---

23 <sup>1</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 The ALJ therefore concluded that Mr. Mullins was not disabled. Tr. 23.

## 2 DISCUSSION

### 3 A. Examining doctors' opinions

4 Mr. Mullins argues that the ALJ erred by rejecting the opinions of examining doctors  
 5 Romalee Davis, M.D., James Hopfenbeck, M.D., and James Hughes, M.D. Dkt. 18 at 5-10. In  
 6 general, the ALJ should give more weight to the opinion of an examining doctor than to that of a  
 7 non-examining doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where it is not  
 8 contradicted by another doctor, the ALJ may reject an examining doctor's opinion only for "clear  
 9 and convincing reasons." *Id.* at 830-31. Where contradicted, the ALJ may not reject an  
 10 examining doctor's opinion without "specific and legitimate reasons" that are supported by  
 11 substantial evidence in the record. *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502  
 12 (9th Cir. 1983)). An ALJ does this by setting out a detailed and thorough summary of the facts  
 13 and conflicting evidence, stating her interpretation of the facts and evidence, and making  
 14 findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). The ALJ must do more than  
 15 offer her conclusions; she must also explain why her interpretation, rather than the examining  
 16 doctor's interpretation, is correct. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (citing  
 17 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

#### 18 I. Dr. Davis

19 Dr. Davis examined Mr. Mullins in May 2011. She noted his difficulties during the  
 20 mental status examination and opined: "It is difficult to get a real sense of this man's problem.  
 21 He appears to want to present himself well and he also appears to have some trouble thinking."  
 22 Tr. 433. She noted he had been taking Sertraline for maybe a year. She diagnosed depressive  
 23 disorder NOS, anxiety disorder NOS, alcohol abuse in questionable long-term full remission, and

1 polysubstance abuse in long-term full remission. She assigned a global assessment of  
2 functioning (GAF) score of about 50, indicating serious symptoms or a serious impairment in  
3 social, occupational, or school functioning. Am. Psychiatric Ass'n, Diagnostic and Statistical  
4 Manual of Mental Disorders (DSM-IV), 34 (4th ed. text rev. 1994). She opined:

5       This man does not appear to have been doing well for some time but at the same  
6       time he wants to appear to me as if he is doing well. He did not report many  
7       symptoms but he did not appear to be thinking so well either. Can't say for sure  
8       what is going on. . . . Any task requiring complex thought looks like it would be  
9       beyond him.

10 Tr. 433-36.

11       The ALJ agreed with Dr. Davis's opinion and gave it significant weight, although the  
12 ALJ found that the opinion did not provide much detail about particular limitations. The ALJ  
13 found that Dr. Davis "indicated only that the claimant could not perform complex tasks,  
14 suggesting that he was capable of simple tasks, simple work decisions, repetitive activities, and  
15 other qualities associated with simple tasks." And the ALJ found that Dr. Davis did not  
16 comment on Mr. Mullins's social functions. The ALJ concluded that Mr. Mullins's residual  
17 functional capacity was consistent with Dr. Davis's opinion, which in turn was consistent with  
18 Mr. Mullins's activities, improvement with treatment, and other factors the ALJ discussed with  
19 respect to credibility. Tr. 19-20.

20       Mr. Mullins argues that the ALJ's interpretation of Dr. Davis's opinion "did not  
21 constitute a properly specific rejection." He points to specific results from the mental status  
22 exam, such as the fact that he could not name the states bordering Washington and could only  
23 recall one out of three items, and the GAF score of 50. He asserts, "On the whole, the opinion  
24 established Plaintiff's inability to sustain the rigors of the regular work world, 8 hour days, and  
25 40 hour weeks." Dkt. 18 at 6-7.

1 The opinion did no such thing. Mr. Mullins's assertion about what the opinion  
2 "established" is merely an alternate interpretation of it. The ALJ incorporated the only concrete  
3 limitation Dr. Davis opined, an inability to perform tasks requiring complex thoughts. Any  
4 further interpretation of the opinion was a matter of weighing and interpreting the evidence, a  
5 task which is the sole province of the ALJ. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
6 2002). When the evidence is susceptible to more than one rational interpretation, the Court must  
7 uphold the Commissioner's conclusion. *Id.* No matter how strenuously Mr. Mullins disagrees  
8 with it, the Court may not disturb the ALJ's assessment of Dr. Davis's opinion.

9 Separately, the ALJ considered GAF scores of 50 or less that Dr. Davis and other sources  
10 assigned to Mr. Mullins. The ALJ found that GAF scores do not reflect all of a person's  
11 activities; incorporate external factors not relevant to a disability determination, such as  
12 homelessness, unemployment, and financial hardships; and may incorporate a claimant's  
13 subjective complaints, meaning that a lack of credibility undermines the accuracy of the scores.  
14 The ALJ therefore considered the GAF scores, but found the scores not helpful in determining  
15 specific limitations to Mr. Mullins's work capacity. The ALJ also found that Mr. Mullins's lack  
16 of credibility and the presence of external factors, such as legal problems involving custody of  
17 his children, undermine the validity of the scores. Tr. 21.

18 As a general matter, a GAF score is not dispositive of mental disability for social security  
19 purposes. *See McFarland v. Astrue*, 288 Fed. Appx. 357, 359 (9th Cir. 2008) (citing Revised  
20 Medical Criteria for Evaluating Mental Disorders & Traumatic Brain Injury, 65 Fed. Reg. 50746,  
21 50764-65 (Aug. 21, 2000) ("The GAF score does not have a direct correlation to the severity  
22 requirements in our mental disorders listings.")); *see also Gutierrez v. Astrue*, No. 12-cv-1390  
23 MEJ, 2013 WL 2468344, at \*19 (N.D. Cal. June 7, 2013) ("A GAF score of 50 does not

1 necessarily establish an impairment seriously interfering with the claimant's ability to perform  
2 basic work activities."'). But a GAF score assigned by an acceptable medical source is a medical  
3 opinion as defined in 20 C.F.R. §§ 404.1527(a)(2) and 416.927(a)(2), and an ALJ must assess a  
4 claimant's residual functional capacity based on all of the relevant evidence in the record,  
5 including medical source opinions. 20 C.F.R. §§ 404.1545(a), 416.945(e). As such, the  
6 regulations indicate that GAF scores are relevant evidence that should be considered and can  
7 only be rejected for specific reasons.

8       The ALJ's generic reasons why GAF scores are not helpful were not valid reasons to  
9 reject the opinions out of hand. But the ALJ also gave specific reasons for rejecting the GAF  
10 scores assigned to Mr. Mullins, that his lack of credibility and the presence of external factors  
11 undermine the validity of the score. Dr. Davis considered Mr. Mullins's poverty as well as his  
12 history of a broken jaw, ulcers, and lung removal as a child when evaluating his GAF score. Tr.  
13 436. And, as discussed below, the ALJ properly found Mr. Mullins not fully credible. These  
14 were valid reasons to discount the GAF scores.

15       Mr. Mullins also asserts that if the ALJ "found Dr. Davis's opinion to be deficient  
16 because this doctor did not specify many limitations, such as social limitations, the ALJ should  
17 have recontacted Dr. Davis." Dkt. 18 at 7. An ALJ's duty to develop the record is triggered  
18 only where the evidence is ambiguous or the record is inadequate to allow for proper evaluation  
19 of the evidence. *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). Dr. Davis's opinion  
20 is neither ambiguous nor inadequate to allow for proper evaluation. The ALJ was not required to  
21 recontact Dr. Davis. The ALJ did not err in evaluating Dr. Davis's opinion.

22       2.       *Dr. Hopfenbeck*

23       Dr. Hopfenbeck examined Mr. Mullins in July 2010. He diagnosed major depression,

1 moderate, recurrent; panic disorder with agoraphobia; and polysubstance dependence in  
2 sustained, full remission; and assigned a GAF score of 45, indicating serious symptoms or a  
3 serious impairment in social, occupational, or school functioning. DSM-IV at 34. He opined  
4 that Mr. Mullins had mild to moderate cognitive limitations and marked to severe social  
5 limitations, stating that Mr. Mullins “can’t stay on a job due to severe anxiety.” He noted that an  
6 antidepressant helped Mr. Mullins’s mood some, but he stopped taking it when his benefits ran  
7 out. Tr. 306-11.

8 The ALJ gave Dr. Hopfenbeck’s opinion little weight because he evaluated Mr. Mullins  
9 at a time when he was not taking medication. The ALJ noted that Dr. Hopfenbeck stated Mr.  
10 Mullins would improve with anti-depressants but never had the opportunity to reassess him after  
11 July 2010. Tr. 20.

12 Mr. Mullins argues that this reason was not specific and legitimate in light of Dr. Davis’s  
13 opinion authored a year later, when Mr. Mullins was taking medication. Mr. Mullins points to  
14 what he asserts are similarities between the opinions and asserts that Dr. Davis “corroborated Dr.  
15 Hopfenbeck’s earlier opinion and eliminated the one reason the ALJ gave to reject Dr.  
16 Hopfenbeck’s opinion.” Dkt. 18 at 9. Again, Mr. Mullins merely proposes an alternative  
17 weighing and interpretation of the two opinions. The ALJ was not required to interpret one  
18 opinion in a manner that negated her reason for rejecting the other.

19 Mr. Mullins also maintains that the ALJ improperly punished him for his inability to  
20 afford medication. Dkt. 23 at 4-5. The ALJ cannot use a claimant’s failure to obtain treatment  
21 he cannot afford to support an adverse credibility determination. *Orn*, 495 F.3d at 638. But that  
22 is not what the ALJ did here. Rather, the ALJ gave greater weight to the medical opinion that  
23 considered Mr. Mullins’s functioning when taking medication. Impairments that can be

1 effectively controlled with medication are not disabling. *Warre v. Comm'r of Soc. Sec. Admin.*,  
2 439 F.3d 1001, 1006 (9th Cir. 2006). This was a permissible weighing of the two opinions.  
3 Because the ALJ's interpretation of the interplay between the two opinions was rational, this  
4 Court should not disturb it.

5       3.       *Dr. Hughes*

6       Dr. Hughes examined Mr. Mullins in March 2010. He diagnosed major depressive  
7 disorder, recurrent, moderate and polysubstance dependence in remission, and assigned a GAF  
8 score of 39, indicating some impairment in reality testing or communication or major impairment  
9 in several areas, such as work or school, family relations, judgment, thinking, or mood. DSM-IV  
10 at 34. He opined that Mr. Mullins had no cognitive limitations, but moderate to severe social  
11 limitations, including severe limitations on his ability to maintain appropriate behavior in a work  
12 setting due to psychomotor retardation. Mr. Mullins was not taking medication at the time of Dr.  
13 Hughes's evaluation. Dr. Hughes opined that treatment would likely restore work capacity. Tr.  
14 312-17.

15       The ALJ found that in light of subsequent treatment notes, Dr. Hughes was correct in his  
16 assessment of Mr. Mullins's likely response to medication, but Dr. Hughes never reassessed him  
17 after March 2010. The ALJ therefore gave Dr. Hughes's opinion little weight with respect to  
18 determining Mr. Mullins's residual functional capacity after March 2010. Tr. 20.

19       Mr. Mullins again argues that the ALJ's reason for rejecting Dr. Hughes's opinion was  
20 invalid in light of Dr. Davis's opinion authored when Mr. Mullins was taking medication. Dkt.  
21 18 at 10. But again, Mr. Mullins bases his argument on an alternative interpretation of the  
22 evidence that the ALJ was not required to accept. The ALJ rationally interpreted and weighed  
23 the opinions. This Court should not disturb that assessment.



1           **B.       Treating nurse practitioners' opinions**

2           Mr. Mullins argues that the ALJ erred by rejecting the opinions of treating nurse  
3 practitioners Mary Montgomery, ARNP, and Sonia Nikolova, ARNP. Dkt. 18 at 10-12. Nurse  
4 practitioners are not acceptable medical sources who can give medical opinions. *See* 20 C.F.R.  
5 § 404.1513(a). The ALJ may evaluate opinions of other medical sources using the same factors  
6 used to evaluate medical opinions of acceptable medical sources. Social Security Ruling 06-03p;  
7 *see also* 20 C.F.R. § 404.1527(d). But the ALJ may give less weight to opinions of non-  
8 acceptable medical sources than to those of acceptable medical sources. SSR 06-03p. The ALJ  
9 must give specific, germane reasons for rejecting opinions from other sources that are not  
10 acceptable medical sources. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

11           *I.       Ms. Montgomery*

12           Ms. Montgomery evaluated Mr. Mullins in March 2011. She diagnosed major depressive  
13 disorder, alcohol dependence, cannabis dependence, and cocaine dependence in full sustained  
14 remission, and assigned a GAF score of 42. DSM-IV at 34. She opined that Mr. Mullins had  
15 marked difficulty with complex tasks, learning, judgment, routines, coworker interaction, public  
16 interaction, and appropriate behavior. She opined that his medications were only slightly  
17 effective, symptoms persisted on his current medications, and “the extent and severity of  
18 symptoms is unlikely to be decreased to the level where gainful employment is possible.” Tr.  
19 464-69.

20           The ALJ gave her opinion little weight. The ALJ found that her opinions regarding his  
21 functional limitations were not specific, stating that a “marked limitation, by itself, is not  
22 helpful.” Tr. 20. An ALJ may reject conclusory opinions. *Bayliss v. Barnhart*, 427 F.3d 1211,  
23 1216 (9th Cir. 2005). But along with each marked limitation, Ms. Montgomery included a

1 description of the limitation, such as “easily frustrated, quickly becomes hopeless, low energy,  
2 and poor concentration” with the marked limitation in the ability to learn new tasks. Tr. 467.

3 Ms. Montgomery did more than merely state Mr. Mullins was markedly limited. As the  
4 Commissioner concedes (Dkt. 22 at 10), this was not a valid reason to reject her opinion.

5 The ALJ found that Ms. Montgomery’s conclusion that Mr. Mullins could not be  
6 gainfully employed was a determination reserved to the Commissioner. Tr. 20. An opinion on  
7 an issue reserved to the Commissioner, such as an opinion that a claimant is “disabled” or  
8 “unable to work,” is not entitled to any special significance. 20 C.F.R. § 404.1527(d),  
9 416.927(d). The ALJ properly rejected this aspect of the opinion.

10 The ALJ found that Ms. Montgomery was not an acceptable medical source and so gave  
11 greater weight to the opinions of Dr. Davis and Dr. Eisenhower, given their credentials. Tr. 20.  
12 The fact that an opinion is from an acceptable medical source is a factor that may justify giving  
13 that opinion greater weight than an opinion from a non-acceptable medical source, although it is  
14 possible for an ALJ to give more weight to the opinion of the non-acceptable source. SSR 06-  
15 03p. The ALJ did not err by giving more weight to the medical opinions than those of Ms.  
16 Montgomery.

17 And the ALJ found that Ms. Montgomery’s opinion was not consistent with her treatment  
18 notes, which showed much more than a slight improvement with medication, and that it was not  
19 consistent with her own evaluation, where she indicated that Mr. Mullins’s anxiety and panic  
20 episodes stopped with medication and that he had largely normal mental status findings. Tr. 20-  
21 21. An ALJ may reject an opinion where there is a discrepancy between the statement assessing  
22 a patient’s limitations and the clinical notes, recorded observations, and other opinions. *Bayliss*,  
23 427 F.3d at 1216. This was a valid reason for rejecting Ms. Montgomery’s opinion.

1 Although the ALJ gave one invalid reason for rejecting Ms. Montgomery's opinion, the  
2 ALJ provided several other germane reasons for rejecting the opinion. Accordingly, the Court  
3 finds that the ALJ's assessment of the opinion should not be disturbed. *See Stout v. Comm'r,*  
4 *Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (error may be harmless where the mistake  
5 was nonprejudicial to the claimant or irrelevant to the ALJ's ultimate decision).

6 2. *Ms. Nikolova*

7 Ms. Nikolova evaluated Ms. Mullins in March 2012. She diagnosed major depressive  
8 disorder, alcohol dependence in early partial remission, and cocaine abuse in sustained full  
9 remission, and assigned a GAF score of 45. She opined that Mr. Mullins had marked or severe  
10 limitations in complex instructions, learning, judgments, routines, coworker interaction, public  
11 interaction, workplace pressure, and appropriate behavior. She opined that Mr. Mullins would  
12 not be able to perform gainful work on a sustained basis. Tr. 471-77.

13 The ALJ gave Ms. Nikolova's opinion little weight because she was not an acceptable  
14 medical source like Dr. Davis or Dr. Eisenhower, and because Ms. Nikolova's opinion was  
15 inconsistent with Mr. Mullins's activities, such as his ability to live on his own independently.  
16 Tr. 21. An ALJ may give less weight to an opinion that is inconsistent with other evidence in the  
17 record. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). The ALJ  
18 rationally interpreted Mr. Mullins's daily activities as inconsistent with the marked and severe  
19 limitations opined by Ms. Nikolova. This was a germane reason to reject the opinion. The ALJ  
20 did not err in evaluating Ms. Nikolova's opinion.

21 **C. Mr. Mullins's credibility**

22 Mr. Mullins argues that the ALJ gave insufficient reasons to find him not fully credible.  
23 Dkt. 18 at 12-13. The ALJ did not find that Mr. Mullins was malingering. Thus, the ALJ was

1 required to provide clear and convincing reasons to reject his testimony. *See Vertigan v. Halter*,  
2 260 F.3d 1044, 1049 (9th Cir. 2001). An ALJ does this by making specific findings supported  
3 by substantial evidence. “General findings are insufficient; rather, the ALJ must identify what  
4 testimony is not credible and what evidence undermines the claimant's complaints.” *Lester*, 81  
5 F.3d at 834.

6 The ALJ found that Mr. Mullins made inconsistent statements, particularly about his  
7 substance use. Tr. 18-19. An ALJ may discredit a claimant’s subjective complaints by  
8 identifying inconsistencies or contradictions in his statements or other relevant evidence.  
9 *Johnson v. Shalala*, 60 F.3d 1428, 1433-34 (9th Cir. 1995). The ALJ noted, for example, that  
10 treatment notes show a significant history of drug and alcohol use, including as recent as January  
11 2012, yet Mr. Mullins testified at the hearing, in April 2012, that he had not used any substances  
12 during the past year. Tr. 18.

13 Mr. Mullins asserts, “Although Plaintiff was somewhat inconsistent, all of these reasons  
14 wash out in light of Dr. Davis’ opinion, the key to the ALJ’s decision.” Dkt. 18 at 12. Plaintiff  
15 essentially asks the Court to ignore a valid reason for finding him not credible in favor of his  
16 own interpretation of the evidence. That the Court cannot do. It is the province of the ALJ to  
17 determine credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The Court may  
18 not substitute its judgment for that of the Commissioner. *Thomas*, 278 F.3d at 954. The Court  
19 will not disturb the ALJ’s credibility finding based on an alternative interpretation of the  
20 evidence.

21 Moreover, the ALJ gave other valid reasons for finding Mr. Mullins not fully credible,  
22 which Mr. Mullins does not challenge. The ALJ found that Mr. Mullins’s condition improved  
23 with treatment. Tr. 18. The effectiveness of medications is a factor the ALJ may consider in

1 assessing credibility. 20 C.F.R. § 404.1529(c)(3). And the ALJ found that Mr. Mullins's  
2 activities were inconsistent with his allegations. Tr. 18. Contradictions between a claimant's  
3 reported activities and his asserted limitations are an issue of credibility. *Morgan v. Comm'r of*  
4 *Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999).

5 The ALJ gave clear and convincing reasons, supported by substantial evidence, to reject  
6 Mr. Mullins's credibility. The Court therefore should not disturb the ALJ's credibility finding.

### 7 CONCLUSION

8 The Commissioner's decision was free of harmful legal error and supported by  
9 substantial evidence. Accordingly, the Court recommends that the Commissioner's decision be  
10 **AFFIRMED** and this case be **DISMISSED** with prejudice.

11 A proposed order accompanies this Report and Recommendation. Objections, if any, to  
12 this Report and Recommendation must be filed and served no later than **July 11, 2014**. If no  
13 objections are filed, the matter will be ready for the Court's consideration on that date. If  
14 objections are filed, any response is due within 14 days after being served with the objections. A  
15 party filing an objection must note the matter for the Court's consideration 14 days from the date  
16 the objection is filed and served. Objections and responses shall not exceed twelve pages. The  
17 failure to timely object may affect the right to appeal.

18 DATED this 27th day of June, 2014.

19 

20 BRIAN A. TSUCHIDA  
21 United States Magistrate Judge  
22  
23